

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNELLA RICHMOND MOSES,
Personal Representative of the Estate of
MARIE MOSES IRONS, Deceased,

Plaintiff,

v

CASE NO.:

HONORABLE:

Lower Court No.: 05-067104-NH

PROVIDENCE HOSPITAL AND
MEDICAL CENTERS, INC., a domestic
nonprofit corporation and PAUL LESSEM,
M.D.

Defendants

SMITH & GIBSON, P.C.

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JULIE C. GIBSON (P34619)
Attorneys for Plaintiff
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KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK

RALPH F. VALITUTTI, JR. (P26128)
RYAN D. EWLES (P64647)
Attorneys for Defendants
10 S. Main, Ste. 200
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(586) 493-4472

NOTICE OF REMOVAL BY DEFENDANTS

TO: CLERK OF THE COURT
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

NOW COME Defendants, PROVIDENCE HOSPITAL AND MEDICAL CENTERS,
INC., a domestic nonprofit corporation by and through their attorneys, KITCH
DRUTCHAS WAGNER VALITUTTI & SHERBROOK, and hereby respectfully submit
this Notice of Removal for the above-captioned case, and as grounds for the removal
state as follows:

1. Plaintiff currently has pending in this Honorable Court, on remand from the Sixth Circuit Court of Appeals, a claim against Providence Hospital and Medical Center, alleging that Dr. Lessem's discharge of Mr. Howard violated federal law, specifically EMTALA, and seeking damages arising out of Mr. Howard's subsequent murder of Marie Moses Irons.

2. Plaintiff also has pending, on stay, an action in the Oakland County Circuit Court, State of Michigan, a state law medical malpractice claim against the Hospital and Dr. Lessem, arising out of the exact same facts—the care and discharge of Mr. Howard, and the exact same damages—the death of Marie Moses Irons, on which the Federal claim is based.

3. This Court did previously dismiss the state malpractice claims (over which the Court exercised jurisdiction on motion of Plaintiff) when granting summary judgment as to the EMTALA; however, now that the EMTALA claim is reinstated, the Court, in the interest of justice, should assert supplemental jurisdiction over the state law claims against these two defendants, under Fed Civ R P 20 and 28 USC 1367(a).

4. Plaintiff, on or about October 19, 2010, moved the state court to lift the stay of proceedings and to allow the filing of an amended Complaint and Affidavit of Merit.

5. Upon filing by Plaintiff of the motions pending in State Court, Defendants have submitted the instant Notice of Removal to each of the parties and the Courts of interest.

6. There are no proceedings that have taken place in the State Court action.

7. The EMTALA claim asserted by Plaintiff in this Court is properly before the Court pursuant to jurisdiction presented by a Federal Question.

8. Moreover, this Court has supplemental jurisdiction pursuant to Title 28, United States Code, § 1367, inasmuch as the Complaint in State Court purports to state claims under Michigan law that are so related to the claim arising under a statute of the United States that it forms part of the same case or controversy under Article III of the United States Constitution.

9. A copy of this Notice will be served on all adverse parties as required by law.

10. A copy of this Notice will be filed with the Clerk of the Circuit Court for the County of Oakland as provided by law.

WHEREFORE, Defendants give notice that this action is therefore removable to this Honorable Court and respectfully request that an order be entered stating the same.

Respectfully submitted,

KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK

By: /s/ Ryan D. Ewles
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Dated: November 10, 2010

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNELLA RICHMOND MOSES,
Personal Representative of the Estate of
MARIE MOSES IRONS, Deceased,

CASE NO.:

HONORABLE:

Plaintiff,

Lower Court No.: 05-067104-NH

v

PROVIDENCE HOSPITAL AND
MEDICAL CENTERS, INC., a domestic
nonprofit corporation and PAUL LESSEM,
M.D.

Defendants.

/

AFFIDAVIT OF COUNSEL

STATE OF MICHIGAN)
) SS:
COUNTY OF MACOMB

The undersigned, being first duly sworn, deposes and states that he is the attorney for Defendants in the above-entitled cause of action; that he has read the foregoing Notice of Removal; and he knows the contents thereof; that the same is true to the best of his knowledge, information and belief.

By: /s/ Ryan D. Ewles
RALPH F. VALITUTTI, JR. (P6128)
RYAN D. EWLES (P64647)
Kitch Drutchas Wagner Valitutti & Sherbrook
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Ralph.Valitutti@kitch.com
Ryan.Ewles@kitch.com

Subscribed and sworn to before me
this 10 th day of November, 2010

/s/ Linda M. Pappas

Notary Public, Macomb County, MI
My commission expires: 12/07/2016
Acting in Macomb County

MTC01\266967.01

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Sherbrook
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHNELLA RICHMOND MOSES,
Personal Representative of the Estate of
MARIE MOSES IRONS, Deceased,

Plaintiff,

v

PROVIDENCE HOSPITAL AND
MEDICAL CENTERS, INC., a domestic
nonprofit corporation and PAUL LESSEM,
M.D.

Defendants

Hon. Nanci J. Grant

Case No.: 05-067104-NH

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**NOTICE OF REMOVAL BY DEFENDANTS FROM STATE COURT AND COUNSEL
OF RECORDS**

TO: CLERK OF THE COURT
Oakland County Circuit Court
1200 N. Telegraph Rd.
Pontiac, MI 48341-0404

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PLEASE TAKE NOTICE that the above-captioned cause has been noticed for removal from the Oakland County Circuit Court, State of Michigan, to the United States District Court for the Eastern District of Michigan, Southern Division, and that attached hereto is a copy of the Notice of Removal which was duly filed on or about November 9, 2010, in the Clerk's Office of said United States District Court for the Eastern District of Michigan, Southern Division.

Respectfully submitted,

KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK

By: 
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Dated: November 10, 2010

MTC01\266950.01

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Johnella Richard Moses, P.R. of the Estate of
Maries Moses Irons, Deceased,

Plaintiff(s),

Case No.

v.

Judge

Providence Hospital and Medical Centers, Inc., et
al.

Magistrate Judge

Defendant(s).

**STATEMENT OF DISCLOSURE
OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST**

Pursuant to E. D. Mich. LR 83.4, Providence Hospital and Medical Centers, Inc.

makes the following disclosure: *(NOTE: A negative report, if appropriate, is required.)*

1. Is said corporate party a subsidiary or affiliate of a publicly owned corporation?

Yes ☐ No ☒

If the answer is yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party.

Parent Corporation/Affiliate Name:

Relationship with Named Party:

2. Is there a publicly owned corporation or its affiliate, not a party to the case, that has a substantial financial interest in the outcome of the litigation?

Yes ☐ No ☒

If the answer is yes, list the identity of such corporation or affiliate and the nature of the financial interest.

Parent Corporation/Affiliate Name:

Nature of Financial Interest:

Date: November 10, 2010

/s/ Ryan D. Ewles

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